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# Legal Issues Facing the Utah Independent Redistricting Commission

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## Commission Meeting of June 15, 2021

Presented By: Matthew M. Cannon, Shareholder

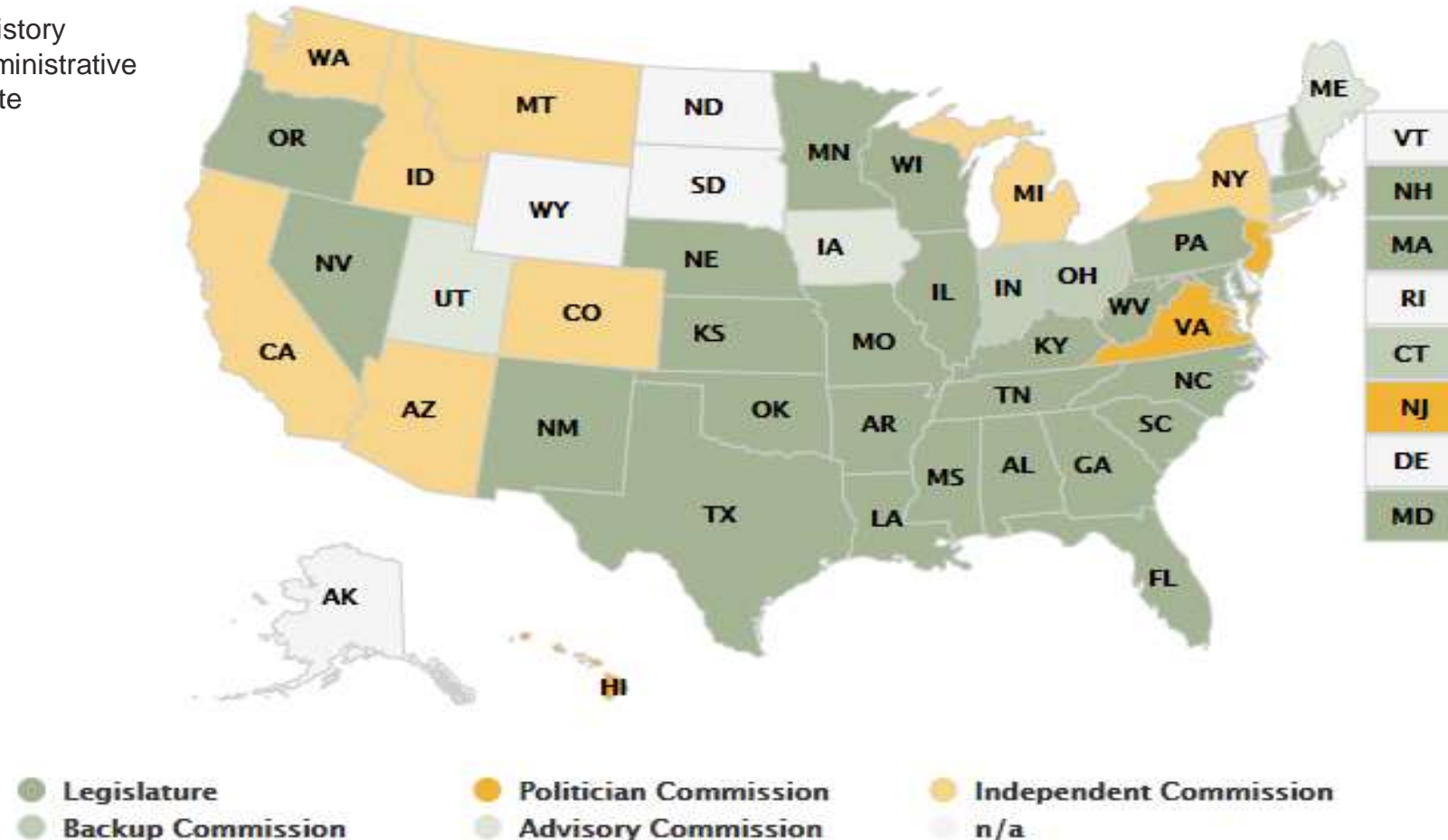
## About the Independent Redistricting Commission

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- New Effort, Unique History
- Quasi-Legislative, Quasi-Administrative
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# Roadmap for Presentation

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- Ethical Duties
- Compliance Requirements
- Substantive Legal Considerations
- Procedural Legal Considerations
- Maps

# Ethical Duties

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- The Commission is **exempt** from various requirements, most notably, essentially the entire Government Operations Code, Title 63A.
- Commissioners are still subject to:
  - Utah Public Officers' and Employees' Ethics Act.
  - The UIRC Ethics Requirements.

# Utah Public Officers' and Employees' Ethics Act

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- A “public officer” is prohibited from:
  - accepting or engaging in “any business or professional activity that would require or induce him to improperly disclose controlled information that he has gained by reason of his official position.”
  - disclosing or improperly using “controlled, private, or protected information acquired by reason of his official position or in the course of official duties in order to further substantially the officer’s or employee’s personal economic interest or to secure special privileges or exemptions for himself or others.”
  - using his official position to “secure special privileges or exemptions for himself or others.”

# Ethical Requirements Under Redistricting Act

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- The Commission “may, by a majority vote, adopt a code of ethics.” Utah Code § 20A-20-203.
- A member of the commission may not engage in any private communication with any individual other than other members of the commission or commission staff, including consultants retained by the commission, that is **material** to any redistricting map or element of a map pending before the commission or intended to be proposed for commission consideration, **without making the communication**, or a detailed and accurate description of the communication including the names of all parties to the communication and the map or element of the map, available to the commission and to the public. Utah Code § 20A-20-301(4).
- A member of the commission shall make the disclosure . . . before the redistricting map or element of a map is considered by the commission.” *Id.*



# Compliance Requirements

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The Commission is required to abide by the following:

- Title 52, Chapter 4, Open and Public Meetings Act;
- Title 63A, Chapter 1, Part 2, (now Utah Code § 67-3-12) Utah Public Finance Website;
- Title 63G, Chapter 2, Government Records Access and Management Act;
- Title 63G, Chapter 6a, Utah Procurement Code; and,
- Title 63J, Chapter 1, Budgetary Procedures Act.

# Substantive Legal Considerations

- Utah and United States Constitutions
- State and Federal Law
- Court Cases
- Title 20A, Chapter 20, Utah Independent Redistricting Commission

# Procedural Legal Considerations

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- Due Process (notice, an opportunity to be heard, and an impartial decision-maker).
  - See, e.g., *V-1 Oil Co. v. Dep't of Env'tl. Quality*, 939 P.2d 1192, 1197 (Utah 1997).
- Neither Arbitrary nor Capricious.
  - See *Rushton v. Gelco Express*, 732 P.2d 109, 111 (Utah 1986) (Durham, J.).
- Record and Explanation of Decision-Making.
  - See *Vali Convalescent & Care Inst. v. Div. of Health Care Fin.*, 797 P.2d 438, 447 (Utah Ct. App. 1990).
- Notice and Comment.
  - See *Utah Rest. Ass'n v. Salt Lake City-Cty. Bd. of Health*, 771 P.2d 671, 674 (Utah Ct. App. 1989).

# Public Participation: Public Hearings

Statutorily Required Public Hearings:	Public Hearings Schedule:
<b>Bear River Region</b> (Box Elder, Cache, and Rich)	September 10, 2021: Cache County (Logan)
<b>Southwest Region</b> (Beaver, Garfield, Iron, Kane, and Washington)	September 24, 2021: Washington County (Washington) September 25, 2021: Iron County (Cedar City)
<b>Mountain Region</b> (Summit, Utah, and Wasatch)	September 18, 2021: Wasatch County (Heber) <b>October 2, 2021: Utah County (Saratoga Springs)</b> (last hearing)
<b>Central Region</b> (Juab, Millard, Piute, Sanpete, Sevier, and Wayne)	September 4, 2021: Sanpete County (Ephraim/Gunnison)
<b>Southeast Region</b> (Carbon, Emery, Grand, and San Juan)	September 3, 2021: San Juan County (Monticello)
<b>Uintah Basin Region</b> (Daggett, Duchesne, and Uintah)	September 17, 2021: Duchesne County (Duchesne)
<b>Wasatch Front Region</b> (Davis, Morgan, Salt Lake, Tooele, and Weber)	September 7, 2021 Tooele County (Tooele) September 11, 2021: Davis County (Layton) September 15, 2021: Salt Lake County (Herriman) October 1, 2021: Salt Lake County (SLC, Glendale Neighborhood)

# Public Participation: Opportunity to Comment

- Public Hearings: At Public Hearings, the public must be provided “a reasonable opportunity to submit written and oral comments to the Commission and to propose redistricting maps.” Utah Code § 20A-20-301.
- Website: The Commission “shall” maintain a website where the public may . . . submit a map to the commission . . . [and] comments on a map presented to, or under consideration by, the Commission.” Utah Code § 20A-20-201.

# Maps

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Map Types: The Commission is considering the following “map types”

- A map of all Utah **congressional** districts;
  - A map of all **state Senate** districts;
  - A map of all **state House** of Representatives districts; and
  - A map of all **State School Board** districts.
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- No later than **14 DAYS** after the final public hearing, the Commission “shall” prepare and recommend three different maps for each map type.

# Map Approval

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- The 3 maps are supposed to garner at least five votes.
- If not, then the Commission will:
  - Recommend 1 map that is approved by at least five (5) members of the Commission; **and**,
  - Recommend 2 additional maps by majority so long as:
    - One is approved by a majority that includes the Joint Appointee of Speaker & President; and
    - One is approved by a majority that includes the Joint Appointee of House and Senate Minority Leadership\*

# Map Evaluation

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- Three Commissioners may, by affirmative vote, require that commission staff evaluate any map drawn by, or presented to, the commission as a possible map for recommendation by the commission to determine whether the map complies with the redistricting standards adopted by the commission.



# Map Threshold Requirements

Independent Redistricting Commission	Legislative Redistricting Committee
<b>Maps</b> <ul style="list-style-type: none"> <li>• Official Population from Most Recent Decennial Census</li> <li>• Population Deviation <ul style="list-style-type: none"> <li>○ Congress: <b>1% largest to smallest</b></li> <li>○ House, Senate, and State School Board: <b>10% largest to smallest</b></li> </ul> </li> <li>• Most Recent Decennial Census</li> <li>• Does not use race as a predominant factor</li> <li>• Complies with U.S. Constitution and federal law (e.g., § 2 of the VRA)</li> </ul> <b>Districts</b> <ul style="list-style-type: none"> <li>• Single Member</li> <li>• Contiguous</li> <li>• Reasonably Compact</li> </ul>	<b>Maps</b> <ul style="list-style-type: none"> <li>• Official Population from Most Recent Decennial Census</li> <li>• Population Deviation <ul style="list-style-type: none"> <li>○ Congress: <b>±0.1%</b></li> <li>○ House, Senate, and State School Board: <b>±5.0%</b></li> </ul> </li> </ul> <b>Districts</b> <ul style="list-style-type: none"> <li>• Single Member</li> <li>• Contiguous</li> <li>• Reasonably Compact</li> </ul>

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NOTE: Each body is required to put forth maps that include 4 Congressional Districts, 29 State Senate Districts, 75 State House Districts, and 15 State School Board Districts

# Map Criteria

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The commission shall **define and adopt** redistricting standards . . . that require that maps . . . , to the extent practicable, comply with the following, **as defined by the commission:**

# Map Criteria

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- preserving communities of interest;
- following natural, geographic, or man-made features, boundaries, or barriers;
- preserving cores of prior districts;
- minimizing the division of municipalities and counties across multiple districts;
- achieving boundary agreement among different types of districts;
- prohibiting the purposeful or undue favoring or disfavoring of:
  - an incumbent elected official;
  - a candidate or prospective candidate for elected office; or
  - a political party.

# Political Data

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- Commission “may” adopt a standard that prohibits use of the following:
  - partisan political data;
  - political party affiliation information;
  - voting records;
  - partisan election results; or
  - residential addresses of incumbents, candidates, or prospective candidates.

\* Except that such information may be for “the purpose of conducting an assessment” of a map.

## Contact:

Matthew M. Cannon  
Ray Quinney & Nebeker P.C.  
36 South State, #1400  
Salt Lake City, UT 84111  
[mcannon@rqn.com](mailto:mcannon@rqn.com)  
(801) 323-3364